

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BOTKIER, INC.,

Plaintiff,

- against -

COSTCO WHOLESALE CORPORATION, et al.,

Defendants.  
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**ECF CASE**

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07 Civ. 11043 (RJS)

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**ANSWER**

Defendant Costco Wholesale Corporation ("Costco"), by its attorneys, for its Answer to the First Amended Complaint:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1.

2. Admits the allegations of paragraphs 2-3.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 4.

4. Admits that the Court has subject-matter jurisdiction to hear this action under 28 U.S.C. §§ 1331, 1338 and 1367 and 15 U.S.C. § 1121, and except as so admitted denies the allegations of paragraphs 5-6.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 7-12.

6. Denies the allegations of paragraph 13.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 14-15.

8. Denies the allegations of paragraph 16.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegation of paragraph 17.

10. Denies the allegations of paragraph 18.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 18a-18e.

12. Denies the allegations of paragraph 18f.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegation of paragraph 19.

14. Denies the allegations of paragraphs 20-21.

15. Admits that on or about October 31, 2007, attorney Bjorn J. Holubar sent Costco a copy of a letter dated October 30, 2007, refers to said letter for its precise contents, and except as so admitted denies the allegations of paragraph 22.

16. Denies the allegations of paragraphs 23-24.

#### **I. COUNT ONE**

17. In response to paragraph 25, Costco realleges and incorporates by reference its responses to paragraphs 1-24, above, as if set forth in full.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 26-28.

19. Denies the allegations of paragraphs 29-33.

#### **II. COUNT TWO**

20. In response to paragraph 34, Costco realleges and incorporates by reference its responses to complaint paragraphs 1-33, above, as if set forth in full.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 35-38.

22. Denies the allegations of paragraphs 39-42.

**III. COUNT THREE**

23. In response to paragraph 43, Costco realleges and incorporates by reference its responses to complaint paragraphs 1-42, above, as if set forth in full.

24. Denies the allegations of paragraphs 44-47.

**IV. COUNT FOUR**

25. In response to paragraph 48, Costco realleges and incorporates by reference its responses to complaint paragraphs 1-47, above, as if set forth in full.

26. Denies the allegations of paragraphs 49-52.

**V. COUNT FIVE**

27. In response to paragraph 53, Costco realleges and incorporates by reference its responses to complaint paragraphs 1-52, above, as if set forth in full.

28. Denies the allegations of paragraphs 54-57.

**VI. COUNT SIX**

29. In response to paragraph 58, Costco realleges and incorporates by reference its responses to complaint paragraphs 1-57, above, as if set forth in full.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 59.

31. Denies the allegations of paragraphs 60-65.

**VII. COUNT SEVEN**

32. In response to paragraph 66, Costco realleges and incorporates by reference its responses to complaint paragraphs 1-65, above, as if set forth in full.

33. Denies the allegations of paragraphs 67-70.

**VIII. COUNT EIGHT**

34. In response to paragraph 71, Costco realleges and incorporates by reference its responses to complaint paragraphs 1-70, above, as if set forth in full.

35. Denies the allegations of paragraphs 72-75.

**IX. COUNT NINE**

36. In response to paragraph 76, Costco repeats and realleges its responses to complaint paragraphs 1-75, above, as if fully set forth.

37. Denies the allegations of paragraphs 77-78.

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 79-80.

39. Denies the allegations of paragraphs 81-82.

**AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by laches.

**WHEREFORE**, Costco prays that the Court:

- i. Dismiss the plaintiff's First Amended Complaint with prejudice;
- ii. Declare, adjudge, and decree that that this is an "exceptional case" that warrants an award of attorneys' fees against the plaintiff;
- iii. Award Costco such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
January 2, 2008

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& JACOBSON LLP

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